IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CENTRAL EXCISE APPEAL NO.4 OF 2006

The Commissioner of Central Excise,
Mumbai-V .. Appellant
v/s.
M/s.Panetrical Engg.Pvt.Ltd. and others .. Respondents

Mr.K.R.Chaudhari i/by Dr.T.C.Kaushik for the appellant.

Mr.M.H.Patil with Ms.Aparna Hirandagi for the respondents.

CORAM : R.M. LODHA &
J.P.DEVADHAR, JJ.

DATED : 14TH MARCH, 2006.

P.C.

Herard Mr.K.R.Chaudhari, the learned counsel for the appellant and Mr.M.H.Patil, the learned counsel for the respondents.

2. The Tribunal considered the entire material and then in paragraph 2.1 recorded the finding concerning the independent status of (i) M/s.Penetrical Engineering Pvt. Ltd. (ii) M/s.Zenith Engineering and (iii) M/s.Pradnya Engineering. On consideration of the entire material, the Tribunal held that the dummy nature of M/s.Zenith Engineering and M/s.Pradnya Engineering cannot be upheld. This is how the Tribunal dealt

with this aspect;

> "(d) PEP is a Private Limited Company with two Directors, having its own machinery and existence. Its independence is not being questioned.
>
> (e) M/s.Zenith is a sole proprietary concern of Mrs.M.Bolinjkar, who happens to be the wife of one of the Directors of PEP. It was started in 1995, was purchased by the Proprietor and shifted to its now address at Gala no.2, Single Estate, Kandivli (E) which is adjacent to unit no.2 of PEP, that by itself cannot be construed to make it a dummy of the Private Limited Company i.e. PEP. They have filed necessary declarations with the same Range officer as of PEP. The department is well aware and accepts its independent status and has granted it separate registration. It is also registered as a separate entity with other Central and State Government Departments. The statements made by the proprietory have been conveniently ignored by the adjudicators. Likewise Pradanya is another proprietary concern of Mrs.Arti Jani wife of a Supervisor of PEP. It was started in 1995, from a rented premises, they are registered under Shop and Establishment Act. They possess hand operated machinery and send out, on job work, the products requiring working by Power operated Machines. The dummy nature of Pradanya and Zenith therefore cannot be upheld in the facts of the case."

3. Then the Tribunal considered the effect of notifications 83/94 CCE dated 11.4.1994 and 84-94 CCEx dated 11.4.1994 in the following manner:

> "(f) the aspect of notfn.83/84 CCE dated

11.04.94 and 84/94 CCEx dated 11.4.94 benefits being available to the declarant and S.S.I. Units for getting part full job done elsewhere has been totally ignored by the lower authority and investigators. They have been led to believe that `job work' benefit was not available to such units or have conveniently omitted to enquire into and consider that aspect when job work was being claimed. These notifications breach the bottom from the Revenue's case of no machinery being available with Zenith and or Pradanya and the entire manufacture being done in & of PEP. There is nothing suspect or amiss about challans of Zenith or and Pradanya being found in the drawers of Mr.Jani at PEP premises along with Invoices, as final job work material received at PEP from Zenith and Pradanya could have been cleared on invoices of Zenith & Pradanya kept from PEP. This submission of the Ld.Advocate for benefit of the notification has force and would exonerate PEP from the owes duty demand made of being the manufacturer of goods, under job work as they are exempted under notification such 83/94 and 84/94 being job work of Zenith & Pradanya as claimed. In any case, this line of investigation was not being logically pursued and enquired. This exhibits a serious lacuna in the investigation and calls for setting aside the order impugned i.e. For clubbing all clearances for purpose of duty in the hand of PEP, when exemption under statutory notification for job work of Zenith and Pradanya goods is not considered by the investigator and the adjudicator. Explanation for job work under notfn.83/94 & 84/94 reads as follows:

> "for the purpose of their notfn, the expression "job work means processing of or working open raw material or semi-finished good process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process

> and the expression "job worker" shall be constructed accordingly."
>
> This would permit goods (raw material/semi finished/unfinished/fully finished) to be sent for job work to PEP via or direct from Zenith and like wise from Pradanya, and goods so manufactured on job work would be fully exempted from duty cannot be charged to duty under the SSI notification by reducing the value in the exemption status of each one of the units i.e. Pradanya, Zenith and PEP. The noncompliance of procedural aspects if any, as urged, cannot deny the grant of benefit of the notification, is well settled in the case of other "job work" notifications eg 214/86 (see Commr. V/Nestle India Ltd.-2002(150)ELT 741 Trib) and Venus Polytex Pvt.Ltd. (2001 (136) ELT 291), following this settled position, we find no reason to load on to the exemption stats of PEP the clearance of "job work" of Pradanya and Zenith and order recovery of duty on the same, as proposed is this case and demanded from PEP."

4. The Tribunal ultimately concluded that since no duty liability is being upheld, the penalty imposed under section 11AC read with Rule 173Q cannot be upheld.

5. In its order, the Tribunal dealt with the four appeals being Appeal No.E/2013 of 2004, E/2071 of 2004, E/2072 of 2004 and E/2073 of 2004. Appeal No.2013 OF 2004 was at the instance of the Central Excise and Appeal Nos.2071 of 2004, 2072 of 2004 and 2073 of 2004 were at the instance of the three

assessees viz.M/s.Penetrical Engineers Pvt.Ltd., M/s.Zenit Engineering and M/s.Pradnya Engineering. All the four appeals arose out of the Order in Original dated 24.4.2002 passed by the Additional Commissioner of Central Excise, Mumbai and the order of the Appellate Authority dated 24th March, 2004, passed by the Commissioner of Central Excise (Appeals). In this backdrop, the contention of the learned counsel for the appellant that the department's appeal being Appeal No.2013 of 2004 could not have been heard together with the other appeals, is misconceived and there is no merit in the question raised in the memo of appeal that the Tribunal has no jurisdiction to pass single order by clubbing the appeals including the department appeal.

6. As regards the contention of the learned counsel for the appellant that the department's appeal No.2013 of 2004 was not at all considered on merits while disposing of the group of appeals by the order dated 11.3.2005, suffice it to say that the Tribunal on consideration of the entire facts obtaining in the case upheld the no duty liability of the assessees and since it upheld no duty liability, set aside the penalty imposed upon the assessees under section 11AC of the Central Excise Act read with Rules 173Q and Rule 209A. Obviously, when the Tribunal upheld no duty liability and consequently, no case for penalty,

nothing remained in the appeal preferred by the department as it sought for enhanced duty and penalty. Thus, there is no merit in the contention of the learned counsel for the department that appeal No.2013 of 2004 was not considered by the Tribunal on merits.

7. The learned counsel for the department also sought to urge that the appeal gives rise to the question of law as to whether the unit can be treated as manufacturing unit/job worker without having any manufacturing activity and/or any machineries and/or any labourers and whether M/s.Pradnya Engineering and M/s.Zenith Engineering were floated to avail SSI exemption separately and evade Central Excise Duty. In our considered view, the question is not question of law but questions of fact. The Tribunal upon consideration of the entire material, recorded as a matter of fact that M/s.Penetrical Engineers Pvt.Ltd., M/s.Zenith Engineering and M/s.Pradnya Engineering were separate independent entity and that the dummy nature of M/s.Pradnya Engineering and M/s.Zenith Engineering cannot be upheld. The finding is recorded by the Tribunal on consideration of the entire material and in our considered view, the said finding is finding of fact based on evidence and that does not give rise to any question of law much less substantial question of law.

8. Consequently, we find that the appeal does not give rise to any substantial question of law. Appeal is dismissed in limine.

(R.M.LODHA, J.)

(J.P.DEVADHAR, J.)